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SUPREME COURT, U. S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1967

No. 814

PHILLIPS PETROLEUM COMPANY,
Petitioner,

vs.

EDWARD J. BRENNER,
United States Commissioner of Patents,
Respondent,

and

PHILLIPS PETROLEUM COMPANY,
Petitioner,

vs.

GOODRICH-GULF CHEMICALS, INC.,
and MONSANTO COMPANY,
Respondents.

BRIEF FOR RESPONDENT GOODRICH-GULF CHEMICALS, INC. IN OPPOSITION TO PETITION FOR CERTIORARI

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This is simply a suit by plaintiff-petitioner seeking review of procedures established by the Commissioner of Patents under 35 U. S. C. § 6 and § 135(a) for conducting an interference. There has been no final action by the Patent Office in the interference, not even, as the Court of Appeals found,

any determination of petitioner's motion to dissolve the interference proceeding (App. 5a).*

The Court of Appeals holding that the present action is premature does not present any special or important reasons for review. There is no conflict with decisions of this Court or of any Court of Appeals, nor is there any departure from the accepted and usual course of judicial proceedings.

STATEMENT OF THE CASE

Plaintiff-petitioner is the junior party in a three-party interference and is under order to show cause why judgment should not be entered against its inventors (App. 2a). The only response to the order was a motion to dissolve the interference on the ground that the apparently senior applicants had no right to make the claim because their applications fail to describe what is claimed. The motion was denied by the Examiner who considered it, but a request that petitioner have a hearing on the motion by the Board of Patent Interferences was granted (App. 2a). This is the only contested issue to which petitioner is a party in the Patent Office. The contested issue between respondents Goodrich-Gulf Chemicals, Inc. and Monsanto Company in the Patent Office is that of priority of invention between their respective inventors; petitioner is not a party to this issue.

ARGUMENT

Petitioner's Questions Presented (Pet. 2) do not arise and its Reasons for Granting the Writ (Pet. 9) do not exist.

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*Page references herein are to the Petition cited as "Pet." and its Appendix cited as "App.".

The Court of Appeals did not hold that the Patent Office is immunized or uniquely free from review for procedural denial of due process (Question 1, Pet. 2, Reason 1, Pet. 9), or has a special status in that regard (Reason 2, Pet. 9), by reason of special review statutes (Question 2) or otherwise. To the contrary, the Court held that the Patent Office, like other Government agencies:

> "is subject to judicial review and restraint in case of arbitrary rules or rulings that infringe on private rights" (App. 4a).

The Court of Appeals has not denied relief where "concededly, hardship to the petitioner is inevitable if judicial relief is denied" (Question 3, Pet. 2-3) but specifically stated:

> "our comments on the availability of remedies in a court review of a final Patent Office order in no way imply that we have concluded the Patent Office has acted improperly vis a vis appellant" (App. 7a).

Finally, the Court of Appeals' decision is not one "abdicating its power to review Patent Office Action" (Reason 3, Pet. 9) but rather is based on that Court's conclusion:

> "Appellant's case is a far cry from those exceptional cases where a court may consider the validity of what is in form an interlocutory administrative order but is in substance a final determination of individual rights or a deprivation of a substantive statutory right" (App. 7a).

Petitioner has shown no error in that conclusion or the reasoning of the Court on which it is based.

Accordingly, the petition should be denied.

Respectfully submitted,

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